



## Course Learning Outcomes for Unit III

Upon completion of this unit, students should be able to:

2. Identify the four main types of criminal evidence used in trials.
  - 2.1 Summarize the history of one of the main types of criminal evidence used in trials.
6. Assess the role of the Fifth Amendment right against self-incrimination.
  - 6.1 Outline the various ways the Fifth Amendment offers immunity from prosecution to witnesses.
9. Discuss the role of competency evaluations in criminal proceedings.
  - 9.1 Assess the advances in determining the admissibility of competency evaluations as criminal evidence in trials.

## Reading Assignment

### Chapter 5:

Witnesses—Lay and Expert

### Chapter 6:

Credibility and Impeachment

## Unit Lesson

One of the primary sources of evidence is a witness. Once someone has personal knowledge of the facts of a case, he or she becomes a potential witness for that case. Witnesses are subpoenaed to ensure that they will appear in court to testify. Witnesses can also receive a *subpoena duces, tecum* that requires the person to bring specific items to court. This may be in addition to the requirement of his or her testimony in court. The two general categories of witnesses are lay and expert.

An individual must personally know case-related facts in order to be considered a lay witness. In addition, the court will request that this person present the case-related information to the court. Lay witnesses are primarily required to testify about facts relevant to the case. However, lay witnesses may testify in some instances about their opinion or make an inference concerning case-related information. The common opinions that lay witnesses give in criminal cases include:

- state of emotion,
- speed of vehicles,
- distances,
- sobriety or intoxication,
- age, identity, and physical condition of a person,
- opinions on miscellaneous matters, such as weight, color, and value,
- character of a person,
- sanity, and
- opinions about handwriting (Garland, 2015).

Garland (2015) points out that “An expert witness is a person skilled in some art, trade, science, or profession. An expert must have knowledge, skill, experience, training, or education that is beyond that of the average person” (p. 130). The most common types of expert witnesses appearing in criminal cases include:

- medical examiner or coroner,
- document examiner,
- fingerprint expert,
- skid-mark expert,
- speed expert,
- an accident reconstructionist,
- experts on bookmaking, narcotics, and other specific types of crimes,
- criminalist or forensic scientist,
- DNA experts,
- footprint experts,
- psychologist and psychiatrist,
- polygraph examiners,
- voiceprint expert, and
- photographers (Garland, 2015).

In order for an expert witness to be eligible to testify in court, three criteria must be met:

1. the subject matter of the expert's proposed testimony must be relevant,
2. the expert's field must be one requiring scientific, technical, or specialized knowledge, and
3. the witness must have the background necessary to qualify as an expert in the field (Garland, 2015, p. 131).

Similar to the *voir dire* process utilized during jury selection, an expert witness must also answer questions concerning his or her qualifications. However, the proof of the expert witness's qualifications must be provided by the side producing the expert witness. For example, if the defense want to bring in a psychologist or psychiatrist, they must provide proof that the psychologist or psychiatrist is a qualified expert witness. Expert witnesses are allowed to provide their opinions and conclusions based on information he or she possesses, secondary data, and the provision of hypothetical facts from which the expert is asked to make conclusions.

Witnesses are expected to be credible, and credible witnesses are perceived to be believable. Thus, the absence of witness credibility makes the witness unbelievable. Therefore, after qualifying to be an actual witness in a case, witnesses must also pass any credibility tests that are applied during the questioning phases of the criminal trial. The cross-examination is one of the primary tools for evaluation of a witness's credibility. During this process, the witness is required to answer questions that are designed to reduce the witness's credibility. If the believability of a witness's testimony is diminished or destroyed, the witness is impeached. Witnesses can be impeached using five methods:

1. by contradiction;
2. by showing that the witness has a bad character with respect to the trait of truthfulness;
3. by showing that the witness has made statements inconsistent with his or her present testimony;
4. by showing that the witness is biased; and
5. by showing that the witness has a failure or deficiency in the ability to perceive, remember, or narrate (Garland, 2015, p. 156).

Witnesses can also impeach themselves by discrediting their testimony (e.g., behavior while on the stand, speaking style, inability to provide a convincing testimony). Witnesses are prohibited from being impeached by questions about their religious beliefs or opinions. Once a witness has been impeached, there is still an opportunity for the side that produced the witness to restore the witness's credibility. This restoration of the witness's credibility can be brought about by the use of the rehabilitation of the witnesses, and in some instances, the proof of prior consistent statements may also be used. While it is a common practice that the party bringing the witness supports the witness, it is possible for the party bringing the witness to impeach their witness. This form of impeachment usually occurs when a party cannot depend on a witness to testify in their favor (e.g., reluctant primary witnesses in a domestic violence case).

Although witnesses can be compelled to testify similar to defendants, witnesses have a privilege against self-incrimination. Thus, a witness is permitted to decline to answer questions that would confirm that he or she is guilty of committing a crime and could result in the witness being prosecuted and convicted for that crime. The witness must claim this privilege and is the only one who can waive the privilege. Witnesses can also be offered immunity against prosecution. Normally, this immunity is offered to someone who has been found engaging in criminal behavior or has been apprehended while engaging in criminal behavior. Their testimony

is more beneficial to the prosecution of a criminal case than if that person were made a defendant in a criminal case. Subsequently, there are two types of immunity that are applied to a witness's testimony in criminal cases: use and derivative use immunity, and transactional immunity. Use and derivative use immunity protects an immunized witness from the use of his or her immunized testimony and any related evidence as a means of seeking prosecution against him or her. Only the testimonial information that has been given immunity and any related evidence cannot be used to charge, try, and convict the immunized witness of a crime. However, transactional immunity is more comprehensive in that it protects the immunized witness from being charged, tried, and convicted of a crime related to any activity discussed by the immunized witness during his or her testimony. Thus, transactional immunity is said to be "blanket immunity," (Garland, 2015, p.170). Many jurisdictions offer immunized witnesses use and derivative use immunity to ensure that the prosecutor's ability to prosecute future criminal cases will not be hindered more than what is necessary to obtain a conviction in the current case (Garland, 2015).

In summation, witnesses are an important type of evidence utilized in criminal cases. The credibility of a witness is integral to the acceptability of the witness's testimony concerning the criminal case. If the witness's credibility is diminished or destroyed, then his or her testimony is no longer considered valid for the criminal case. Therefore, there are procedures by which the witness's credibility can be evaluated and, if necessary, rehabilitated.

#### Reference

Garland, N. M. (2015). *Criminal evidence* (7th ed.). New York, NY: McGraw Hill Education.

### Suggested Reading

The following articles bring some insight to the witness testimony and credibility in criminal cases. You are highly encouraged to review these articles to supplement the lesson content.

*In order to access the resources below, you must first log into the myCSU Student Portal and access the Criminal Justice database within the CSU Online Library.*

Saltzburg, S. A. (2010). Dual roles: Fact and expert witness. *Criminal Justice*, 25(3), 32-35.

Wessel, E., Drevland, G. C. B., Eilertsen, D. E., & Magnussen, S. (2006). Credibility of the emotional witness: A study of ratings by court judges. *Law and Human Behavior*, 30(2), 221-30.

The following interactive tutorials are a great enhancement tool to learn more about the roles of witnesses and types of witnesses as discussed in the lesson lecture.

- Click [here](#) to access the link below in Mycourse Tools for *The Witness* tutorial.
- Click [here](#) to access the link below in Mycourse Tools for the *Types of Witnesses* tutorial.

### Learning Activities (Non-Graded)

Imagine the type of role you would play as a lay or expert witness using the expertise that you acquired in your favorite position (current or former) or your favorite extracurricular activity. Think about the type of subpoena you might receive and the type of information and/or items you might be required to bring to the court. Think about the type of lay opinion testimony you would be asked to provide. Brainstorm about the type of information you would be required to use as the basis for your expert witness testimony. Contemplate the methods of impeachment to which you might be subjected. Take time to reflect upon your thoughts to determine whether or not you are prepared to be a lay or expert witness and the likelihood that you will be required to appear in court as a lay or expert witness.

Non-graded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.